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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1964

No. ~~460~~ 459

PACIFIC INSURANCE ASSOCIATES, LTD., a Guam corporation,
Petitioner,

vs.

FASHIONS, INCORPORATED, a corporation,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals for the Ninth Circuit

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PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
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Petitioner prays that a writ of certiorari issue t
review the judgment of the United States Court o
Appeals for the Ninth Circuit entered in the above
entitled cause on May 18, 1964.

OPINION BELOW

The opinion of the Court of Appeals, pursuant to its order was not reported. The Court's printed opinion is a part of Volume one (doc. 103) of the record heretofore submitted by the Clerk for the Court of Appeals and attached hereto in the Appendix.

JURISDICTION

The judgment of the Court of Appeals was dated and entered May 18, 1964. A petition for rehearing was timely filed. It was denied by order dated and entered June 8, 1964. By order dated June 15, 1964, the time within which to petition for certiorari was extended to and including August 31, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1) and Rule 19(b) of the United States Supreme Court Rules.

QUESTIONS PRESENTED

1. Whether the Ninth Circuit's new standard of review for Guam cases pursuant to 28 U.S.C. §§ 1291, 1294, i.e., the "clear or manifest error" rule, creates a conflict with the decisions of other circuit courts of appeal.

2. Whether the application of this standard to Guam, which has adopted California statutory law, "has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned

such departure by a lower court as to call for an exercise of this court's power of supervision".

STATEMENT OF THE CASE

Jurisdiction of this action was vested in the District Court of Guam and on appeal in the United States Court of Appeals for the Ninth Circuit by Title 48, §§ 1294(4) and 1424, United States Code.

This action in unlawful detainer, pursuant to §§ 1159 through 1179 of the Guam Code of Civil Procedure, was commenced on January 16, 1958, in the Island Court of Guam. After judgment in favor of the plaintiff, the defendant appealed to the Appellate Division of the District Court, which court entered its judgment and opinion on February 19, 1960, granting defendant a retrial on the narrow issue of a partial eviction.

A trial on that issue was held by the Island Court of Guam and judgment was entered in favor of the plaintiff on the 6th day of May, 1960, the court finding as a matter of fact that there had been no partial eviction from the premises. This judgment was also appealed by defendant and on the 1st day of February 1963, the Appellate Division of the District Court again reversed the Island Court and entered judgment for the defendant. This judgment was appealed to the Court of Appeals for the Ninth Circuit.

On May 18, 1964, the Court of Appeals for the Ninth Circuit affirmed the decision of the District Court of Guam.

REASONS FOR GRANTING THE WRIT

1. DECISIONS OF THE COURTS OF APPEALS HAVE CREATED A CONFLICT AS TO THE STANDARD OF REVIEW APPLICABLE TO THE INSULAR POSSESSIONS.

In affirming the decision of the District Court of Guam, the Court of Appeals cited *Gumataotao v. Government of Guam*, 322 F.2d 580, 582 (1963), as authority for the rule that the District Court of Guam would not be reversed unless "clear and manifest error is shown".

The decision in *Gumataotao* had relied on *Bonet v. Texas Co. (P.R.), Inc.*, 308 U.S. 463, 60 S.Ct. 349 (1940) and *De Castro v. Board of Commissioners*, 322 U.S. 451, 64 S.Ct. 1121 (1944). In the *Bonet* case, the Supreme Court, in reversing a decree of the Court of Appeals which had reversed the Supreme Court of Puerto Rico on a point of local law, stated that "to justify reversal in such cases, the error must be clear or manifest; the interpretation must be inescapably wrong; the decision must be patently erroneous". The reason for this rigorous standard of review was stated subsequently by the court in *De Castro, supra:*

> "Our opinion in the Sancho Bonet case was the culmination of efforts by this court, . . . to insure a review by the federal courts of decisions of the local courts of our insular possessions in matters of peculiarly local concern which should leave appropriate scope for the development by these courts of a system of law, which, differing from our own in its origins and principles, would nevertheless be suitable to local customs and needs." P. 454.

These two Supreme Court decisions were reasonable as applied to Puerto Rico, where the cases decided had arisen. The Act of April 12, 1900, c. 191, § 8 in part, 31 Stat. 79, continued in full force and effect the laws and ordinances of Puerto Rico then in force, except for laws inconsistent with military orders or U. S. law. And under Act April 12, 1900, c. 191, § 15, 31 Stat. 80, the legislative assembly of Puerto Rico had power to adopt or reject any of the provisions of the Spanish Civil Code. *Agenjo v. Agenjo,* C.C.C. Puerto Rico 1921, 276 F. 105. This policy was evinced in 48 U.S.C.A. 735, which was in effect at the time the Supreme Court handed down the *Bonet* and *De Castro* decisions. Since Puerto Rico was authorized by Congress to adopt Spanish law, and in fact did so in many of the areas of its laws, the Supreme Court's concern that the standard of review "should leave appropriate scope for the development by those courts of a system of law, which, differing from our own in its origins and principles, . . ." was reasonable.

The Third Circuit, however, does not apply the standard of review laid down by *Bonet* and *De Castro* in reviewing decisions of the Virgin Islands. In *Clen v. Jorgensen,* C.C.A. Virgin Islands 1920, 265 F. 120, the court determined that Act March 3, 1917, c. 171, § 2, 39 Stat. 1132, evinced a Congressional intent that appeals from the District Court of the Virgin Islands to the Third Circuit should be treated as had been the cases arising from the Islands by the courts of Denmark. The court reasoned that since the judgments of

the Island Courts had been reviewable de novo on the record by the Supreme Court of Denmark, then decisions by the District Court of the Virgin Islands should be similarly reviewed on appeal, both as to law and to fact, by the Circuit Court of Appeals. In *Callwood v. Callwood* (D.C. Virgin Islands 1954), 127 F. Supp. 179, the Third Circuit reaffirmed that appeals from the District Court of the Virgin Islands are tried by the Court of Appeals de novo and no findings of the District Court upon the evidence are binding upon the litigants upon appeal.

Both Puerto Rico and the Virgin Islands have Congressional authority to maintain aspects of local law in effect prior to their receiving territorial status. The reasoning of the *Bonet* and *De Castro* cases, i.e., that local law differing in origins and principles should be respected by reviewing only inescapably wrong decisions seems applicable to both territories. Yet decisions appealed from the District Court of Puerto Rico to the First Circuit obtain review only if the error is "clear or manifest" or "inescapably wrong" while an appeal from the District Court of the Virgin Islands is reviewable de novo.

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2. THE REASONS GIVEN BY THE SUPREME COURT FOR APPLYING THE "CLEAR AND MANIFEST" RULE TO INSULAR POSSESSIONS DO NOT EXIST IN GUAM.

The Ninth Circuit, as previously pointed out, has adopted the "clear or manifest error" standard in its review of decisions of the District Court of Guam.

The Ninth Circuit, by applying this standard to Guam, has created the irony of applying the standard where the reasons for the standard do not exist. While admittedly reasonable when applied to territories which have retained law "differing from our own in its origins and principles," it is anomalous when applied to a territory which has adopted virtually in toto the statutory law of one of our sovereign states.

The statutes under which the instant case arose, i.e., Chapter 4, Title 2 of the Guam Code of Civil Procedure, §§ 1159-1179 are in all material respects the same and in most instances copied verbatim from the California Unlawful Detainer Statutes in the California Code of Civil Procedure bearing the section numbers.

In enacting the Code of Civil Procedure, the legislature declared that all laws and rules theretofore in force in Guam, unless expressly continued in force by the code, were repealed and abrogated. Guam Code of Civil Procedure, § 18.

As early as 1933, the United States Navy had enacted "Civil Regulations" which were copied from the California Codes. These laws were, of course, suspended during the Japanese occupation but were revived in 1944 and reprinted in 1947. (*U. S. Gov. Printing Office Ed. 1947.*) The announced purpose in following California code law so closely was to provide a large body of court decisions and other legal literature available to aid in the interpretation of the various sections. *Forward, Guam Code of Civil Procedure.*

The Court of Appeals for the Ninth Circuit early held that the adoption from California of a code of laws designed to replace the original part-Spanish law warranted an inference that the codified rules were intended to have the same significance and scope as given in California. *United States v. Johnson,* 181 F.2d 577, 580 (9th Cir. 1950).

It thus becomes obvious that Guam does not have a system "differing from our own in its origins and principles". By laying down that standard, the Supreme Court intended to prevent the Courts of Appeals from "superimposing upon the Spanish law our common law preconceptions except so far as that law must yield to the express will of the United States". *De Castro, supra.* In other words, the court intended the insular possessions to maintain the system of law they had chosen. Guam has chosen to adopt virtually in toto the statutory law of California with its incidents and common law preconceptions. To deny the same standard of effective review given to other common law courts is to deny one of those incidents simply because Guam happens to be an insular possession.

Until the *Gumataotao* case, the same standards of review applied to all District Court appeals were applied to Guam appeals by the Ninth Circuit. The only reason given for the sudden change of review standards in the *Gumataotao* case is that Guam is an insular possession.

The application of the *Bonet* standard to all insular possessions ignores differences in governmental origins and processes instead of respecting them as the court intended. The conflict of decisions among the circuit courts points up the need of standards of review for insular possessions which would recognize the differences of dissimilar territories.

Adoption of a new "standard" by the Court of Appeals for the Ninth Circuit may well frustrate congressional intent as to the development of Guam stated as follows:

> ". . . given a period of peace, the growth of Guam as a transportation and commercial center for American interests in the Far East seems almost a foregone conclusion. American business enterprise in the area will want, and need, a center in which it can have the full protection of American laws and legal procedure." S.Rep. No. 2109 81st Cong., 2nd Sess. p. 4 (1950).

The "clear and manifest error" rule, if applied at all in Guam, should be applied at the trial court level. The Island Court tried the case twice and made written findings of fact. In reversing the Island Court, the Appellate Division of the District Court found no error in the findings and heard no evidence but ignored the Island Court findings. This was equivalent to a trial de novo without the benefit of testimony. Even by ordinary and usual standards of review there was no prejudicial error in the Island Court proceedings. If any reason at all exists for the new "clear

and manifest error" rule on review of Guam cases, it is at the "grass roots" level of the Island Court.

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3. CONCLUSION

The "clear or manifest error" standard should not be applied to the District Court of Guam. It denies Guam an incident of the laws it has chosen to adopt, i.e., effective review, and results in the application of a standard where the reason for the standard does not exist. To apply the "clear or manifest error" standard to all insular possessions creates a conflict with the decisions of other circuit courts of appeals and departs from the accepted and usual course of judicial procedure. Such a standard of review applied to Guam ignores differences in governmental origins and processes and defeats the clearly announced purpose of the Supreme Court in applying the "clear or manifest error" standard rather than implementing it. The petition should, therefore, be granted.

Dated, Oakland, California,
August 18, 1964.

Respectfully submitted,
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(Appendix Follows)

Appendix

United States Court of Appeals
For the Ninth Circuit

Pacific Insurance Associates, Ltd., a Guam Corporation, Plaintiff-Appellant, vs. Fashions, Incorporated, a Corporation, Defendant-Appellee.	No. 18,621

[May 18, 1964]

Upon Appeal from the District Court of Guam

Before: ORR, MERRILL and DUNIWAY, Circuit Judges

MERRILL, Circuit Judge:

In this action for unlawful detainer, brought under §§ 1159-1179a of the Guam Code of Civil Procedure, judgment in favor of the plaintiff was rendered by the Island Court of Guam. Upon appeal that judgment was reversed by the Appellate Division of the District Court of Guam. This appeal followed.

We note at the outset that on matters of purely local law the courts of Guam "will not be reversed unless clear and manifest error is shown." Guma-

taotao v. Gov't. of Guam (9 Cir. 1963) 332 F.2d 580, 582.

Appellant seeks to terminate a sublease of business premises and dispossess the sublessee for failure to pay the prescribed rental and failure to insure the premises as required by the sublease. Appellee defends upon the ground that it has suffered partial eviction attributable to the appellant. The parties had joined in paving a parking area covering portions of the subleased premises and appellant's adjoining property from which appellee was substantially excluded by one of the appellant's other tenants, who, operating a used car business, utilized the parking area, with appellant's authorization, as a stand for his merchandise for a period of 17 months. The trial court found that there was no partial eviction since there were still some empty parking spaces available for the use of appellee's business customers and employees.

The district court reversed the trial court in this determination, holding that there had been a partial eviction. It concluded that the duty to pay the prescribed rental was suspended during the period of partial eviction, being superseded by an obligation in quantum meruit to pay the reasonable value of the remainder of the premises; that since rent for the period of partial eviction had already been paid in advance appellee therefore had a right to a subsequent allowance or set-off for the difference between that rent and the value of the quantum meruit obligation; that appellant's "right to relief through the summary

procedure of unlawful detainer was barred until such time as the allowance for the partial eviction was either agreed upon or adjudicated"; that accordingly appellant was not entitled to recover possession of the property in these proceedings.

Pursuant to order of the district court, appellee had paid sums into court as a condition to its right to remain in possession, pending final disposition of the case. Upon granting judgment for appellant the trial court had ordered this fund disbursed. The district court noted that the disbursement ordered by the trial court allowed the appellant an increase of about 80 per cent above the stipulated rental. The district court felt this to be inequitable, and that the appellant should receive from this sum no more than the unpaid rental as stipulated less costs and nominal damages for the partial eviction. It modified the order of disbursement accordingly.

Upon this phase of the case appellant advances two arguments.

1. It contends that the district court was not justified in reversing the Island court's determination that no partial eviction had been suffered.

The district court ruled that the fact that some parking spaces were available was not sufficient. It stated in its opinion:

> "We believe that, under the proper construction of paragraph 9 of the sublease, quoted above, in the light of the objectives sought by the sublease and the conduct of the parties, the defendant-appellant was entitled not merely to share in the

use of the parking lot for itself and its customers, but also to have the parking lot kept free from use other than for access to the buildings and for such parking as was normally incident to businesses carried on within the buildings, and not to have the parking lot itself used for carrying on business or as a space for dead storage or as a demonstration area."

2. Appellant also advances what it apparently regards as favorable equitable considerations. The district court obviously felt that to permit forfeiture under all of the circumstances would have been inequitable, and that this inequity was not outweighed by the matters relied on by appellant.

We find no manifest error in these determinations.

On an earlier appeal to the district court, that court had ordered the case remanded to the trial court for a determination of the issue of partial eviction. Partial eviction had been asserted by appellee in a counterclaim which the trial court had dismissed. In remanding the case to the trial court the district court recognized that dismissal had been proper since "in an unlawful detainer proceeding the defendant is not entitled to claim any affirmative relief, either by way of counterclaim or cross-complaint." Appellant asserts that the district court erred on the former appeal in remanding for determination of this issue which properly had been dismissed.

The district court, however, recognized that partial eviction, while not properly the subject of a counterclaim, would constitute matter of defense to the claim

of the plaintiffs and held that the assertion of the point in the counterclaim sufficiently served to plead it as a defense. This was not manifest error.

Affirmed.

The court has unanimously concluded that the inclusion of the foregoing opinion in the published law reports would serve no public purpose. It therefore directs the clerk that this opinion be not submitted for such publication.

United States Court of Appeals
For the Ninth Circuit

Pacific Insurance Associates, Ltd., a Guam Corporation, Plaintiff-Appellant, vs. Fashions, Incorporated, a Corporation, Defendant-Appellee.	No. 18,621

JUDGMENT

Appeal from the United States District Court for the District of Guam.

This Cause came on to be heard on the Transcript of the Record from the United States District Court for the District of Guam and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered May 18, 1964.

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OCTOBER TERM, 1964

No. 459

PACIFIC INSURANCE ASSOCIATES, LTD.,
a Guam corporation, *Petitioner*,

v.

FASHIONS, INCORPORATED, a corporation, *Respondent*.

BRIEF FOR THE RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Ninth Circuit

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 459

PACIFIC INSURANCE ASSOCIATES, LTD.,
a Guam corporation, *Petitioner,*

v.

FASHIONS, INCORPORATED, a corporation, *Respondent.*

BRIEF FOR THE RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Ninth Circuit

Respondent believes that a Writ of Certiorari should not be issued to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

The opinion of the Court of Appeals was not reported; the court having unanimously agreed that the publishing of this opinion would serve no public interest. The judgment is set forth in the appendix of the petition.

JURISDICTION

The judgment of the Court of Appeals was entered May 18, 1964. The petition of Appellant below for re-hearing was timely filed and was denied by the court on June 8, 1964. On June 15, 1964, an order was entered extending petitioner's time in which to petition for a writ of certiorari until 31 August, 1964. The petition, dated August 18, 1964, was timely served on counsel for Respondent being received on August 29, 1964. Jurisdiction of this petition is in this court pursuant to 28 U.S.C. section 1254(1) and Rule 19(b) of the Rules of the United States Supreme Court.

QUESTIONS PRESENTED

1. Whether the Court of Appeals has adopted a new standard of review for cases arising in Guam pursuant to 28 U.S.C. section 1291; 1294, creating a conflict with the decisions of the other Courts of Appeals.

2. Whether the rule or standard of decision of the Court of Appeals for the Ninth Circuit has departed from the accepted or the usual course of judicial proceedings or has sanctioned such departure by the Appellate Division of the District Court of Guam so as to warrant the exercise of this court's power of supervision.

STATEMENT OF THE CASE

Jurisdiction of this case was vested in the Island Court of Guam pursuant to Section 82 Guam Code of Civil Procedure; in the Appellate Division of the District Court of Guam by Section 1424(a) Title 48 U.S.C., and in the United States Court of Appeals for the Ninth Circuit by section 1294 Title 28 U.S.C.

This action in unlawful detainer, pursuant to Section 1159 to 1179 Guam Code of Civil Procedure, was commenced 16 January, 1958. Judgment was in favor of plaintiff, petitioner herein. Respondent herein appealed to the Appellate Division of the District Court of Guam which on 19 February, 1960, granted to respondent a new trial on the issue as to whether there had been a partial eviction.

Hearing on that issue was had by the Island Court of Guam and judgment was entered on 6 May, 1960, for Plaintiff. The Island Court of Guam found as a matter of fact that there had been no partial eviction. Defendant, Respondent herein, appealed again to the Appellant Division of the District Court of Guam and on 1 February, 1963, that court again reversed the Island Court of Guam and judgment was entered for Defendant, Respondent herein. Petitioner herein appealed this decision to the United States Court of Appeals for the Ninth Circuit.

On the 18th day of May, 1964, the United States Court of Appeals for the Ninth Circuit affirmed unanimously the decision of the Appellate Divisions of the District Court of Guam.

ARGUMENT

The judgment of the United States Court of Appeals for the Ninth Circuit is correct; is not in conflict with any other circuit; does not depart from the accepted and usual course of procedure and does not warrant the exercise of this court's power of supervision. There is insufficient basis to warrant a further review by this court of this case.

1. The United States Court of Appeals for the Ninth Circuit Has Not Adopted a New Standard of Review for Cases Arising in Guam and the Standard of the "Clear and Manifest Error" Rule Does Not Conflict With the Decisions of the Other Circuits.

Petitioner bases its assertions upon an alleged conflict in that the First Circuit in reviewing appeals from Puerto Rico must apply the rule in *Bonet* v. *Texas Co. (P.R) Inc.*, 308 US 463 and *De Castro* v. *Board of Commissioners*, 322 US 451, while the Third Circuit does not, but as shown by *Clen* v. *Jorgensen*, 265 F. 120, and *Collwood* v. *Collwood*, 127 F.Supp. 179, reviews such cases de novo. The Ninth Circuit followed in this case the rule set forth in *Gumataotao* v. *Government of Guam*, 322 F.2d 580 (1963), which is the same rule as followed by the First Circuit.

There is, thus, no conflict between the First Circuit and the Ninth Circuit.

The Third Circuit, as is shown by *Clen* v. *Jorgensen*, supra, and *Collwood* v. *Collwood*, supra, does not apply this rule but reviews cases both as to the law and the facts—there is a trial de novo.

This is not a conflict between the Circuits but one between the text of the Organic Acts. The de novo type of review of Virgin Island cases by the Third Circuit is provided for by statute, as is set forth in *People of Virgin Islands* v. *Price*, 181 F.2d 394 (1950):

> ". . . It is plain that by these acts Congress intended to continue in force in the Virgin Islands the local law existing under Danish sovereignty, so far as compatible with the changed sovereignty and until changed either by Congress or by the local legislative bodies. Judicial procedure, including the scope of review upon appeal, was a

part of the body of local law thus continued in force. Clen v. Jorgensen, (3 Cir., 1920), 265 F. 120. The Clen case was the first to reach this court after the change in sovereignty. One of the questions involved in that case was the scope of our review. We there pointed out that prior to the change in sovereignty an appeal was allowed from the district court to the Supreme Court of Denmark, in which court the whole record was reviewed de novo and we stated, 265 F. at page 124: 'Therefore, until Congress shall provide otherwise, we shall regard the appellate jurisdiction conferred by the recited act (Sec. 2 of the Organic Act of 1917) to be such as to enable this court to review on appeal all matters of fact and of law involved in the judgments brought here for review.' . . . .

"It is obvious that in a case tried to a jury in the District Court appellate review could not take the form of a trial de novo, as appears to have been the practice under the Danish law. But there is nothing in our procedure which prevents a complete review on appeal of all disputed questions of fact. Nor, as we pointed out in the Clen case, is such broad review incompatible with the changed sovereignty of the islands. On the contrary, as Professor Orfield has pointed out, it is in accordance with the more enlightened modern view, both in the United States and England, which grants an appeal on the merits as well as on questions of law. We therefore, hold, in accord with our decision in Clen v. Jorgensen, that under the local law of the Virgin Islands we have both the power and the duty to review matters of fact as well as of law which are involved in an appeal . . . ."

Thus, there is no conflict between the circuits.

The instant case involves an appeal on a question of local law as decided by the highest tribunal of the

Unincorporated territory of Guam. No statutory authority exists for a trial de novo as was provided for on review of Virgin Island cases.

The Court of Appeals for the Ninth Circuit properly applied the rule as laid down by this court for review of cases arising in Puerto Rico. This is a prevailing, well established, sound rule which should be followed.

Fernandez' Heirs v. *Fernandez*, 184 F.2d 1015 (1st Cir.) Cert. Den. 341 US 902, 95 L.Ed. 1342:

> "... The Supreme Court of Puerto Rico is free to formulate a local doctrine of de facto officers which may not in all respects coincide with the doctrine as generally applied in the courts here on the Continent. In quite an analogous situation presented in Monagas v. Vidal, 1 Cir., 1948, 170 F.2d 99, 106, certiorari denied 1949, 335 U.S. 911, 69 S.Ct. 483, 93 L.Ed. 444, we held that the Supreme Court of Puerto Rico must be given similar latitude in formulating and applying the local doctrine of res judicata, for it is the primary function of that court 'to establish the rules of insular judicial administration to conform with its view of insular public Policy' ...."

> "Since the judgment of the Supreme Court of Puerto Rico is supportable upon an adequate ground of purely local law, as to which we cannot say that the determination of that court is 'inescapably wrong', it is clear that the judgment must be affirmed. DeCastro v. Board of Commissioners, 1944, 322 U.S. 451, 64 S.Ct. 1121, 88 L.Ed. 1394. . . ."

Meagher v. *Eastern Iron and Metal Co.*, 225 F.2d 841 (9 Cir.) 350 US 933, 100 L.Ed. 815 Cert. Den.:

> "... One of the questions before us is whether the Supreme Court had the legal power so to dis-

regard the Circuit Court's findings and substitute its own. This is a question of law upon which the Hawaiian Supreme Court can be reversed only if its decision is 'manifestly erroneous,' the United States Supreme Court so holding in Waialua Agricultural Co. v. Christian, 305 U.S. 91, 59 S.Ct. 21, 83 L.Ed. 60 . . . ."

"There is no merit in appellants' contention that Federal Rule 52(a), 28 U.S.C.A., is here relevant. The Federal Rules of Civil Procedure govern only United States District Courts. F.R.C.P. rule 1. They do not apply to the Hawaiian Territorial Courts and have not been made applicable to appeals to the Supreme Court of Hawaii by its legislature. Fong v. James W. Glover, 9 Cir., 197 F.2d 710 holds no more than that the rules apply as to the method of taking an appeal from the Hawaiian Supreme Court to this court. We affirm the decision in this appeal . . . ."

Schaffer v. *Below*, ... 278 F.2d 619, ... (3rd Cir.):

". . . The district court's finding of fact that Vose was not guilty of fraud finds ample support in the record. It is settled that this court will not overturn the district court's finding of fact unless clearly erroneous. Rule 52(a), Federal Rules of Civil Procedure, 28 U.S.C. Such is not the case here and we therefore see no merit in this assignment of error . . . ."

Pac v. *Stevens*, 267 F.2d 449 (9th Cir.) Cert. Den. 360 US 933, 3 L.Ed. 1547:

". . . This Court cannot review the ruling of the Territorial Court that a person who brings a contract action under the statute must establish as a condition precedent that he has exhausted his right of action or other remedy by suing the purchaser.

irrespective of good faith of the latter, since we cannot say such an interpretation is inescapably wrong . . . ."

". . . Upon a matter of statutory construction, this court should not reverse unless it can be established that the decision is patently erroneous . . . ."

Warner v. *First National Bank of Minneapolis*, 236 F.2d 853 (8 Cir.) Cert. Den. 352 US 927, 1 L.Ed.2d 162:

". . . This court has frequently stated that upon doubtful questions of local law it will not adopt a view contrary to that of the trial judge unless convinced of error . . . ."

In the matter of *Disciplinary Proceedings against Harriet Bouslog Sawyer*, Petitioner, ... 360 US 622, ... 3 L.Ed. 1473:

". . . Of course this Court and the Courts of Appeals must give the Territorial Courts freedom in developing principles of local law and in interpreting local legislation. See Bonet v. Texas Co. (P.R.), Inc., 308 US 463, 84 L ed 401, 60 S Ct 349, Decastro v. San Juan, 322 US 451, 454-458, 88 L ed 1384, 1389-1392, 64 S Ct 1121 . . . ."

The Court of Appeals in the instant case has properly applied the rule laid down by this court, and no question of substantial public concern is presented which merits a grant of certiorari.

2. The Court of Appeals for the Ninth Circuit Has Not Departed From the Accepted or the Usual Course of Judicial Proceedings Nor Sanctioned Such Departure By the Appellate Division of the District Court of Guam so as to Warrant the Exercise of This Court's Power of Supervision

The Court of Appeals has not departed from the usual standards for review of cases as is amply shown by the cases cited above.

In this case the Court of Appeals was reviewing the determination of the highest territorial tribunal of the Unincorporated territory of Guam upon a question of local law.

The standard set forth by this court in cases of this nature for the review of a determination of local law in *In Re Sawyer, supra*, reviewing a case arising from the Ninth Circuit is not only the proper standard to apply but such application, we assert, is mandatory upon the Ninth Circuit.

In view of the command of this court in similar cases it cannot be said that the Ninth Circuit was in error in not holding a trial de novo. There is no statutory authority to do so. In the absence of manifest error, the decision of the Appellate Division of the District Court of Guam, the highest local tribunal of this territory, should not be disturbed upon a matter of purely local law and its interpretation. To do so would be to refuse to permit the development of a local system of jurisprudence suited to local condition and problems. Clearly the Ninth Circuit has in no way approved or departed from the usual proper standards for judical or appellate procedure.

CONCLUSION

The writ should be denied since the Court of Appeals for the Ninth Circuit is not in conflict with other circuits; is following the instructions of this court; has not departed from the usual course of either appellate review or judicial proceedings; nor has sanctioned such departure.

Respectfully submitted,

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